BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
RICHARD T. and HELEN P. GLYER)

Appearances:

For Appellants: Richard T. Glyer, in pro. per.

For Respondent: Noel J. Robinson
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action Of the Franchise Tax Board on the protest of Richard T. and Helen P. Glyer against proposed assessments of additional personal income tax in the amounts of $710.22 and $283.42 for the years 1967 and 1968, respectively.

Appeal of Richard T. and Helen P. Glyer

Appellants are both employed by San Francisco. State University. Mr. Glyer is a professor of creative arts,. specializing in drama, and' Mrs.. Glyer is a, professor of physical education, with a specialty in recreation leadership. Mr. Glyer also does some professional acting. Appellants' joint California personal. income tax returns for the years in question reported adjusted gross income, itemized deductions, and taxable income: as follows: 1/

	1967	1968
Adjusted Gross Income	$31,442.00	$ 28 ,540 00
Total Itemized Deductions	9,603.14	5,301.47
Taxable- Income	$21,838.86	$23,237. 53

The adjusted gross income for 1967 reflected an_ alleged net rental loss of $420.00. The 1968 adjusted: gross income reflected an alleged. net rental loss of $828.00 and an. alleged capital loss of $207.00 on the sale of a rental houseboat.

Respondent originally sought to audit appellants 196.7 and: 1968 returns in November 1971. An audit was impossible at the time because appellants were traveling on sabbatical leaves and could not make their records available for audit until their return in September 1972. Since the statute of limitations for 196.7 would expire before appellants returned, respondent acted without conducting an audit and disallowed all the itemized deductions, the rental losses, and the capital loss, claimed for the years in question and issued proposed assessments on February 15, 1972. Appellants protested and the matter was held in abeyance until their return.

In the course of an audit conducted after appellants returned from their sabbatical leaves and during this appeal, the parties have made several concessions and have reached complete agreement on several issues. For 1967, the parties agree that $3,771.16 of the claimed itemized deductions are allowable and $1,751.42 of them

1/ There were several errors in addition and subtraction on the returns for both years. All the errors have been corrected in arriving at the figures contained in this opinion.

are not allowable. Respondent has also conceded that an additional $2,936.33 of travel expenses incurred by appellants in 1967 are a proper deduction for that year. For 1968, the parties agree that $3,790.50 of the total claimed itemized deductions and the $207.00 capital loss on the sale of the houseboat are allowable and $679.82 of the itemized deductions are not allowable. The following items, therefore, remain in issue: (1) itemized deductions in the amount of $1,144.23 claimed for 1967; (2) itemized deductions in the amount of $831.15 claimed for 1968; and (3) the net rental losses for both years.

(1) 1967 Itemized Deductions

Appellants led a student study tour of Europe from June 21, 1967 to August 13, 1967. The tour was part of the curriculum of San Francisco State University and was entitled "Creative Arts in Europe". Appellants were co-professors of the course and were paid by the university for teaching it. Appellants were responsible for organizing and making arrangements for the tour and for recruiting students.

A tour package was arranged through an independent tour operator. The package included hotel accommodations and two meals a day, as well as transportation. Although appellants served as co-professors, the tour operator only paid the expenses for one of them. Appellants had to pay the expenses for the other. Additionally, they had to pay expenses not covered by the tour package (e.g., student recruiting expenses, the cost of their third meal each day, museum and guide fees, tips, etc.) along with some unexpected costs.

After the tour disbanded in New York on August 13, 1967, appellants flew to Montreal for three days. In Montreal, appellants visited the world's fair, Expo '67, allegedly to allow Mrs. Glyer to study the varied recreational facilities and displays and to allow Mr. Glyer to study the many theatre groups.

Appellants deducted $4,080.56 on their 1967 return for expenses incurred in connection with the above activities. Of this amount, $483.50 was for the trip to Montreal: the balance related to the European tour. Respondent disallowed the entire amount claimed for the trip to Montreal as a nondeductible personal expenditure. Respondent has conceded that appellants incurred $2,936.33 in deductible expenses in connection with the student

study tour, but it would still deny the remaining $660.73 claimed *in* connection with the tour for lack of substantiation.

It is well settled that income tax deductions are a matter of legislative grace, and the burden is on the taxpayer to show by competent evidence that he is entitled to any deduction claimed. (Deputy v. du Pont, 308 U.S. 488 [84 L. Ed. 416] (1940); New Colonial Ice co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348] (1934).) Appellants contend that the expenses of their entire trip, including the excursion to Montreal, are deductible under section 17202 of the Revenue and Taxation Code, which provides in part:

> (a) There shall be allowed as a deduction al) the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including--
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> * * *
>
> (2) Traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business:...

To the extent research and education expenses fall into this category, a deduction is allowed.

Respondent's regulations provide in part:

> (1) Expenditures made by a taxpayer for his education are deductible if they are for education (including research activities) undertaken primarily for the purpose of::
>
> (A) Maintaining or improving skills required by the taxpayer in his employment or other trade or business, or
>
> (B) Meeting the express requirements of a taxpayer's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the taxpayer of his salary, status or employment.
>
> * * *

> (4) If a taxpayer travels away from home primarily to obtain education the expenses of which are deductible under this section, his expenditures for travel, meals, and lodging while away from home are deductible. ... If the taxpayer's travel away from home is primarily personal, the taxpayer's expenditures for travel, meals, and lodging (other than meals and lodging during the time spent in participating in deductible educational pursuits) are not deductible. ... (Cal. Admin. Code, tit. 18, reg. 17202(e).) (Emphasis added.) [2]

In support of their position, appellants maintain that they were hired by the university for their expertise in particular fields and that in order to retain their positions they must maintain or increase their expertise. This allegedly requires that they conduct research and study in their respective fields since, as is true for many university faculty members, established courses taught within the confines of a classroom are inadequate or nonexistent. Appellants claim that their trip to Montreal was for the purpose of conducting research in their respective fields. Mr. Glyer stated that the exposition provided an excellent opportunity for him to see and study several theatrical presentations. Mrs. Glyer claimed that the exposition provided her with an unusual opportunity to study the recreational facilities and interests of many foreign countries.

Upon thorough review of the record we must conclude that appellants have failed to establish that they were entitled to any greater travel and educational expense deductions in 1967 than those allowed them to

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2/ The federal regulations were liberalized in 1967 by eliminating the subjective "primary purpose" test and permitting a deduction for educational expenses provided they have a direct relationship with the taxpayer's employment or other trade or business. (See Treas. Reg. § 1.162-5(d) (1967); Krist v. Commissioner, 483 F.2d 1345, (2d Cir. 1973).) However, the Franchise Tax Board has not followed this lead and has retained the "primary purpose" test.

date by respondent. Appellants' proof of their expenditures consisted primarily of their travel diary and their own reconstructed travel expense schedules. On the basis of that type of evidence, we believe respondent has already been quite generous in the deductions allowed in connection with the European student tour. As for the trip to Montreal, although appellants undoubtedly enjoyed a number of cultural and educational experiences at Expo '67, we are not convinced *that their activities differed in any substantial way from those of other tourists attending the world's fair. (See generally Esther M. Rosenberg, (I 69,225 P-H Memo. T.C. (1969); Adelson v. United States, 342 F.2d 332 (9th Cir. 1965); Dennehy v. Commissioner, 309 F.2d 149 (6th Cir. 1962).) Since appellants have not shown that their trip to Montreal was undertaken primarily for educational purposes, we conclude that respondent properly denied the cost of that trip as a business expense deduction.

(2) 1968 Itemized Deductions

There are five different deduction items which make up the $831.15 still in issue for 1968.

(a) The first of these is an expenditure by Mrs. Glyer of $94.00 to attend a national Campfire Girls convention in Phoenix, Arizona. At the time, Mrs. Glyer was an officer of a local regional office of the Campfire Girls, a tax-exempt organization. Appellants originally sought to deduct this amount under section 17202 as an ordinary and necessary business expense connected with Mrs. Glyer's special field of recreation leadership; Respondent verified that the $94.00 was spent as claimed, but denied that it was an ordinary and necessary business expense.

On appeal, while continuing to claim the item was a business expense, appellants have advanced the alternative argument that the amount was deductible as a charitable contribution under section 17214 of the Revenue and Taxation Code. Unreimbursed out-of-pocket expenses incurred by a taxpayer while attending a meeting of a charitable organization in an official capacity are deductible as charitable contributions. (L. H. Clark, ¶ 70,098 P-H Memo. T.C. (1970).) The $94.00 was therefore properly deductible in 1968 as a charitable contribution.

(b) Appellants also deducted $308.27 as the cost of a trip by Mr. Glyer to Minneapolis, Minnesota, to study the Guthrie Theater and its associated laboratory theaters. They claim the cost of the trip was a

deductible education expense. However, on appeal they have only been able to substantiate the expenditure of $175.27 and have abandoned any claim to the balance. Respondent denies the expense was an educational expense and would disallow it entirely.

Looking at subdivision (4) of respondent's regulation 17202(e), supra, we find that Mr. Glyer made the trip primarily to obtain education which would maintain or improve skills required by him in his employment as a drama professor. Consequently, the substantiated expenditure of $175.27 was properly deductible as an educational expense.

(c) During 1968, appellants purchased a typewriter which they use for business purposes. The purchase price of the typewriter was $189.00. Appellants deducted the entire purchase price as a business expense in 1968. Respondent maintains that the item should have been capitalized and depreciated rather than deducted in full. Consequently, it would allow $31.50 as a depreciation deduction for 1968.

Appellants claim there is no need to capitalize the purchase of so small an item. The applicable regulation provides in part:

> The following paragraphs include examples of capital expenditures:
>
> (1) The cost of acquisition, construction, or erection of buildings, machinery and equipment, furniture and fixtures, and similar property having a useful life substantially beyond the taxable year. ... (Cal. Admin. Code, tit. 18, reg. 17283(b).)

Appellants' typewriter had a useful life well in excess of one year and its purchase price was properly classified as a capital expenditure. Since appellants made no attempt to show that an amount greater than $31.50 should be allowed as depreciation for 1968, we accept respondent's allowance of that amount.

(d) The next item to be considered is an expenditure of $40.88 by Mr. Glyer in 1968 to have some materials printed and distributed to the students in one of the graduate classes he taught. Although respondent verified that the money was spent as claimed, it would deny the deduction on the ground that it was not a

business expense. The furnishing of extra course materials to students is an important ingredient in the performance of duties as a university professor. (Seymour Feinstein, ¶ 70,288 P-H Memo. T.C. (1970).) The deduction was proper.

(e) The last contested deduction for 1968 is $199.00 appellants claimed as expenditures for books, journals, and film and film processing. They claim these materials related to their work as professors. Respondent verified that the amount was spent as claimed but it would deny the deduction as having no business purpose, even though it allowed a deduction for the same type of items in 1967 and has already allowed appellants to deduct depreciation on a camera for 1968. Expenditures for such items are specifically deductible under respondent's own regulation. (Cal. Admin. Code, tit. 18, reg. 17202(f).)

(3) Net Rental Losses for 1967 and 1968

The final issue for resolution is whether appellants were entitled to claim net rental losses of $420.00 for 1967 and $828.00 for 1968. During both of those years appellants owned a houseboat which they had purchased in 1964 for recreational purposes. In May of 1966 they allegedly entered into an oral rental agreement with a Mr. Proffer of Isleton, California. Pursuant to that agreement, Mr. Proffer was to repair and maintain the houseboat while offering it for rent to third parties. For these services Mr. Proffer allegedly was to receive 60 percent of the rental receipts and appellants 40 percent. Appellants contend that this venture was not a profitable one and in April 1967 Mr. Proffer discontinued his arrangement with them. Thereafter they allegedly attempted to sell the houseboat, advertising in newspapers and ultimately listing it for sale with a yacht broker in early June 1967. When they returned from their European trip in late August of 1967, the houseboat still had not been sold. They then allegedly transported it to Stockton, California, for extensive repairs which were not completed until late September 1967. Appellants contend the houseboat was rented three times in the fall of 1967 and was then placed in covered dockage until its sale in July 1968. They allege that they made no personal use of the vessel between September 1966, and the time of its sale, other than to run it to Stockton for repairs in August 1967.

In their returns for 1967 and 1968, appellants deducted all their maintenance and repair expenses and depreciation on the houseboat. The deductions exceeded

reported rental receipts in each year as shown in the following table:

	1967	1968
Deductions:		
Depreciation	$1,031.00	$1,031.00
Repair Expenses	779.35	699.06
Other Expenses	70.58	
Total Deductions	$1,880.83	$1,730.06
Rental Receipts	$ -235.00	$ 150.00
Rental Loss	($1,645.93)*	($1,580.06)*

* The amounts of rental losses claimed in appellants' returns ($420.00 for 1967 and $828.00 for 1968) were the figures resulting when the above rental losses were netted with unrelated rental profits.

The deductions were claimed under sections 17252, subdivision (b), and 17208, subdivision (a)(2), of the Revenue and Taxation Code, which respectively allow the deduction of ordinary and necessary expenses and depreciation attributable to property held for the production of income.

Respondent has never disputed the amount of the houseboat repair and maintenance expenses appellants claim to have incurred. It disallowed one-half of the total expense and depreciation deductions claimed, however, on the theory that only one-half of them were attributable to property held for the production of income. Respondent contends that the remaining half of the expenses and depreciation was attributable to appellants' personal use of the houseboat, since it was originally purchased for their own recreational purposes and was available for their personal use during the years in question. The disallowance of one-half of the expenses and depreciation resulted in the claimed losses being returned to income.

Whether appellants were entitled to the full expense and depreciation deductions claimed depends on their showing that the houseboat had been converted from a pleasure boat to income-producing property and was held primarily for the production of income during 1967 and 1968. In our opinion they have failed to make that showing. Other than their own self-serving statements, appellants have offered no proof of their efforts to rent the houseboat or of their success in that regard. Their

reported rental receipts for the years in question were minimal ($235.0~0 in 1967 and $150.00 in 1968). Although appellants state they made no recreationa. use of the houseboat during 1967 and 1968, it appears that the houseboat was available for their personal use if they had wished to so use it. Mere nonuse of a pleasure boat by the taxpayer does not convert it into income producing property. (May v. Commissioner, 299 F.2d 725 (4th Cir. 1962).) By the same token, merely offering a pleasure craft for sale does not automatically work such a conversion. (George W. Ritter, ¶ 46,237 P-H Memo; T.C. (1946), affd. per curiam, 163 F.2d 1019 (6th Cir. 1947).) Prior to its actual sale in July 1968, we are not convinced that appellants ever unmistakably converted their houseboat into property held for the production of income. In fact, on the basis of the record before us, we believe respondent has already been quite liberal in allowing one-half of the expense and depreciation deductions claimed by appellants with respect to the houseboat.. The net rental losses reported by appellants were therefore properly returned to income for 1967 and 1968.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Richard T. and Helen P. Glyer against proposed assessments of additional personal income tax in the amounts of $710.22 and $283.42 for the years 1967 and 1968, respectively, be and the same is hereby modified in accordance with the opinion of the board, and in all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 16th day of August , 1977, by the State Board of Equalization.

William M. Bennett, Chairman

_____, Member

_____, Member

_____, Member

_____, Member